

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

GUARDSMARK, LLC

Employer

and

Case 14-RC-12705

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 148, AFL-CIO

Petitioner<sup>1</sup>

**REGIONAL DIRECTOR'S DECISION AND ORDER**

The Employer, Guardsmark, LLC, provides plant protection services to various customers, including Global Brass and Copper, Inc. d/b/a Olin Brass ("Olin"). The Petitioner, International Union of Operating Engineers, Local 148, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all firefighters employed by the Employer at Olin's East Alton, Illinois facility. A hearing officer of the Board held a hearing and the parties filed briefs with me, which I have carefully considered.

As evidenced at the hearing and in the briefs, the parties raise two issues: (1) whether the firefighters are guards under Section 9(b)(3) and therefore not appropriately represented by the Petitioner which admits non-guards to membership; and (2) whether four individuals alternately referred to as platoon leaders and captains are supervisors under Section 2(11) of the Act. The Employer contends that the firefighters are guards because they perform typical guard duties and the petition should be dismissed. The Petitioner contends that the guard duties performed by the firefighters are minimal and incidental to their primary duties of firefighting and they are not guards and can be

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<sup>1</sup> The Petitioner's name appears as amended at hearing.

properly represented by the Petitioner, which admits employees other than guards. With respect to the supervisory issue, the Employer argues that the platoon leaders/captains are supervisors and should be excluded from the unit while the Petitioner argues they are not supervisors and should be included.

For the reasons set forth below, I have concluded that the firefighters are guards under Section 9(b)(3) of the Act and therefore cannot be represented by the Petitioner. Accordingly, I have ordered that the petition be dismissed. As I have found the firefighters to be guards and have dismissed the petition, it is unnecessary to address the Employer's argument that the four platoon leaders/captains are supervisors.<sup>2</sup>

### **I. OVERVIEW OF OPERATIONS**

The Employer provides plant protection services to various customers, including Olin. The Employer currently has one service contract with Olin to provide security, safety, and firefighting services for Olin at its East Alton, Illinois plant. The Employer employs 12 firefighters, including the 4 platoon leaders/captains, and approximately 8 guards at the Olin facility. The 12 firefighters report to the Employer's manager of protection services, Jonneice Young. The security or gate guards report to the daytime

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<sup>2</sup> If I were to decide the issue, I would find the four platoon leaders/captains are not supervisors. The burden of proving such status is on the Employer and it did not meet its burden. *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 9 (2006). The Employer contends platoon leaders assign work to the firefighters, but presented no specific evidence of the platoon leaders using independent judgment in making assignments by assessing the various skills and abilities of the firefighters. There is also no specific evidence of platoon leaders using independent judgment in directing employees, nor is there any specific evidence that platoon leaders are held accountable for, and suffer adverse consequences for, the poor performance of the individuals under them. The Employer's job description for supervisors, Exhibit 4, is conclusionary only and not controlling. *Avante at Wilson, Inc.*, 348 NLRB No. 71, slip op. at 2-3 (2006). As to discipline, the Employer only provided one example of the issuance of discipline and it occurred a year ago. There is no evidence the platoon leader involved issued discipline or effectively recommended discipline, nor is there any record evidence that this particular platoon leader was ever told he had the authority to issue any discipline on his own. The firefighter and the platoon leader who testified both stated platoon leaders could not and have not issued discipline. While one platoon leader said he might send someone home if two firefighters got into a fight, there is no evidence this has ever occurred. There is no evidence that the platoon leader would use independent judgment in sending someone home, or that the platoon leader could compel anyone to come in to replace the employee sent home. Finally, while platoon leaders participate in meetings, such participation is secondary indicia only and does not, by itself, establish supervisory authority.

patrolman who in turn reports to Young. Young reports to the Employer's manager-in-charge, Charles Donley, Jr., who is responsible for all the Employer's accounts assigned to the Employer's St. Louis, Missouri office, including the Olin account.

The Employer's firefighters, including those working at Olin, are required to be certified by the state as firefighters. Firefighters and security guards are also required to obtain a Permanent Employee Registration Certification (PERC) card from the State of Illinois. In order to obtain a PERC card, an employee must receive 20 hours of training in such subjects as first aid, investigations, report writing, safety, safe driving, HAZMAT, and HAZWOPER. To obtain a PERC card, an employee must also go through a fingerprint check for both the state and the FBI. Eleven of the firefighters have this PERC card. One of the firefighters is exempt from having to obtain the card due to his status as a "peace" officer with a law enforcement background.

The Employer's firefighters and security guards working at Olin are all bound by the Employer's manual entitled General Orders, Regulations, and Instructions for Uniformed Personnel. Paragraph 1 on page 16 of the General Orders states, "The purpose of your employment is to aid in keeping peace and order, preventing vandalism and other crimes, preventing fire and preventing loss of the client's property." This manual includes sections on first aid; fire protection; powers of a private security officer; report writing; visual safety inspections; briefcase, lunchbox, and purse inspections; vehicle inspections; point traffic control; parking lot security; and natural security hazards. Firefighters and guards are expected to be familiar with the contents of the manual and periodic examinations are conducted respecting the contents of this manual.

The Olin plant where the Employer's firefighters and guards work is a casting facility. Metals are melted and then used to make weapons as well as certain U.S. coins. The firefighters at Olin work on four shifts, A through D, with two firefighters and

one platoon/captain on each shift. The shifts are generally 12 hours long, though some shifts have been extended to 16 hours. Each shift works 7 days on and 7 days off.

## **II. STATUS OF THE FIREFIGHTERS**

Guards are defined by Section 9(b)(3) of the Act as “any individual employed as a guard to enforce against employees and other persons rules to protect the property of the employer or to protect the safety of persons on the employer’s premises.” Section 9(b)(3) also prohibits the Board from certifying a union as the representative of a guard unit if that union accepts into membership individuals who are not guards. The parties do not dispute that the Petitioner admits as members individuals who are not guards. As I conclude the firefighters are guards under Section 9(b)(3), the Petitioner cannot be certified as the representative of the firefighters.

The Board has defined guard responsibilities as those typically associated with traditional police and plant security functions such as: (1) the enforcement of rules directed at other employees; (2) the authority to compel compliance with those rules; (3) training in weapons and security procedures; (4) possession of weapons; (5) participation in security rounds or patrols; (6) monitoring and controlling access to the employer’s premises; and (7) wearing guard-type uniforms or displaying other indicia of guard status. *Boeing Co.*, 328 NLRB 128, 130 (1999); *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993). In determining whether employees are guards, the Board is not concerned with a numerical accounting of the percentage of time they spend on such duties, but the nature of the duties. *Rhode Island Hospital*, *supra*. Employees do not have to perform guard duties as their only function. *The Wackenhut Corp.*, 196 NLRB 278, 279 (1972). Employees will be deemed guards as long as their guard duties are more than a minor or incidental part of their overall responsibilities. *Rhode Island Hospital*, *supra* at 347.

The firefighters at Olin operate out of the fire department at Olin's facility, while the security guards, also called gate guards, are stationed at various gates throughout Olin's facility. Both the firefighters and the gate guards wear uniforms, though their uniforms are different. Guards wear wool pants and white dress shirts with the Employer's logo. Firefighters wear dark blue pants and shirts made of fire resistant material with the Employer's logo on it. Neither the firefighters nor the guards carry weapons, though one firefighter and some of the guards are licensed to carry weapons. While carrying weapons is a traditional guard duty, employees need not carry weapons or be trained in weaponry to be found guards. See *A.W. Schlesinger Geriatric Center*, 267 NLRB 1363, 1364 (1983).

The firefighters and gate guards fill out daily reports which are then given to the Employer's manager of protection services. These reports, samples of which were provided by the Employer, list several preprinted duties and provide blank lines on which to write other duties performed for the client. The daily reports and record testimony reflect the firefighters typically begin their day at the fire department at Olin where they are engaged in various fire-related duties. The fire station consists of three bays and holds a fire engine, a rescue truck, and a hazardous materials trailer. Fire station duties include checking and cleaning the fire trucks, checking all the fire equipment including extinguishers, checking all the gear and equipment on the fire trucks, cleaning the fire station, answering telephones and radios, and filling out various paperwork including the daily reports.

Firefighters also respond to fires and other safety hazards throughout the Olin plant. If a fire is detected somewhere on the property, the firefighters are dispatched by the client to that location to put out the fire. The firefighters also clean up the fire equipment after a fire, including making sure the extinguishers are all working and that used extinguishers have been replaced. They also perform "standby" or fire watch

duties. Certain procedures at the Olin facility are expected to create fires, and, in these circumstances, firefighters are on standby to monitor the situation and to be ready to put out the fire. Firefighters also issue hot work permits for any work involving heat such as cutting torches and welding, as well as confined space permits (CSEs) for work at Olin's facility. In order to issue the hot work or CSE permits, the firefighters inspect the work space to ensure it is safe to work in, including checking the air quality and the gas levels, and check to ensure the rules for performing such work are being followed. Firefighters are also trained in rescue operations and respond to medical emergencies at the facility.

The firefighters patrol the client's property. They perform fence line patrols which involve checking the fences on the perimeters of the client's property looking for breaches in the fence line and checking for unauthorized entry. These fence line patrols do not appear to be performed at any particular time but the record reflects they are performed on a regular basis. Even the platoon leader, who spends more time in the fire station than the firefighters, testified that he typically spends an hour a day on fence line patrols. Firefighters also respond to fence alarms. The fences along the Olin facility are equipped with alarms that go off when the fence is breached. When the alarms go off, the dispatcher at the main gate, an Olin employee, notifies the firefighters in the fire department and one of the firefighters then goes and checks the fences to see what caused the alarm. The record reflects most of the fence alarms are triggered by deer that get caught in the fence.<sup>3</sup> Firefighters also respond to building door alarms which indicate someone has entered the building improperly.

In addition to patrolling the fence line, firefighters are also expected to patrol other areas or zones of the Olin facility. The firefighters walk throughout these zones checking for unauthorized personnel as well as for safety hazards such as blocked fire

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<sup>3</sup> While the Employer, in its brief, contends that Exhibit 1 shows firefighter Tim Brown, on March 9, 2008, chasing a "criminal" away from the fence line, the daily report actually reads that Brown found an "animal" that Brown then chased off the property.

doors and electrical equipment accidentally left on. Firefighters also check the extinguishers throughout the facility as well as the sprinkler systems. Firefighters have keys to areas that cannot be accessed by other employees of Olin, including keys to the main office. Firefighters lock and unlock the main office, and periodically check the main office, including going into office cubicles, to make sure no equipment such as coffee pots and space heaters have been left on, that everything is in order, that the windows are closed, and to ensure no unauthorized personnel are present. If firefighters detect security breaches or some other problem, they alert Olin's dispatcher at the main gate. Firefighters are authorized to investigate infractions to determine what occurred, and to write a report on the infraction. The Employer's manager of protection services testified without contradiction that the firefighters could also make recommendations as to what discipline the client's employees would receive for the rule infractions, though no specific examples of such recommendations were given. Rule violators are treated the same by firefighters and guards. Neither has the authority to make arrests.

The record also reflects that firefighters are expected to perform turnstile duty twice each day at specified times, with each turnstile duty lasting approximately 30 minutes. The firefighters take turns performing the turnstile duty. The turnstile is an entrance/exit in the middle of a parking lot in which employees come and go during shift changes. Firefighters check ID badges of the individuals entering and exiting through the turnstile to ensure only authorized personnel are entering the building. If firefighters encounter someone who is not authorized to be on the premises, they have the authority to ask the individual to leave the facility and can escort the individual off the premises. If the individual does not leave, the firefighter is to notify the dispatcher at the main gate who then contacts the police.

In addition to checking ID badges, the firefighters also check for contraband during turnstile duty. This involves checking lunch boxes, bags, and any containers

brought into the facility for unauthorized substances such as cigarettes, cigarette lighters, weaponry, and tools. The client, Olin, has a no-smoking policy so firefighters are expected to enforce such policy by checking for cigarettes and cigarette lighters. Firefighters also check any bags, boxes, parcels, and other containers leaving the property for unauthorized items such as weaponry, tools, and scrap metals including brass to prevent theft of the client's property.

Firefighters also perform parking lot patrols checking for illegally parked vehicles, blocked access to entrances and exits, suspicious vehicles, and anything that would impede traffic. The daily reports indicate that a firefighter recently spent an hour on March 29, 2008 checking on a vehicle blocking an oil truck at the Olin plant. Unauthorized vehicles, or vehicles parked in the wrong areas, are ticketed by the firefighters. These tickets are monitored by the client and after receiving so many tickets, the client tows the vehicle. The record does not specifically reflect the frequency with which firefighters currently issue parking tickets. The record reflects that at least the firefighters on the day shift have written fewer tickets after the client hired a daytime patrolman, though the record does not reflect when the daytime patrolman was hired. The record does not reflect that the hiring of the daytime patrolman has had any impact on the ability of the firefighters on other shifts to issue tickets. The daily reports provided by the Employer reflect that parking tickets were issued by firemen recently on January 23, 2008, January 29, 2008, February 20, 2008, and February 26, 2008, each issued by a different firefighter.

The Employer contends that the non-firefighter duties, including fence line patrol, fence alarm response, turnstile duties, and parking lot checks, take approximately 30 to 40 percent of the firefighters' time. While the one firefighter testified that his firefighting duties took about 90 to 95 percent of his time, he admitted on cross-examination, after being questioned about the amount of time he spent on non-firefighting duties as



detailed on one of his own daily reports, that his non-firefighting duties took more time than he had originally thought. This firefighter's own 2008 daily reports reflect that he spent from 30 minutes to as much as 6 hours a day on fence line patrols, parking lot patrols, and turnstile duties. The firefighter testified that the daily reports for February 19 and February 27, 2008 were typical of his day, and the February 19 report indicates the firefighter performed 30 minutes of turnstile duties and the February 27 report indicates he performed 2 hours of fence line patrol. Because this one firefighter testified that the daily reports reflect only about 40 percent of the activities actually performed each day, the Petitioner argues the daily reports are inaccurate and cannot be used to establish the duties that are performed by the firefighters. Even assuming the daily reports do not record all the activities performed on a given day, the Petitioner does not dispute that the activities that are listed on the report are accurate. These daily reports, as noted, indicate this firefighter, as well as the other firefighters, spend a regular and substantial portion of their time on traditional guard functions including fence line patrol, parking lot patrols, and turnstile duties.

As noted above, the Board does not look at the percentage of time spent by the disputed employees in performing guard duties, but rather the nature of the duties and whether they are minor and incidental to their firefighting duties. The record reflects that the firefighters are expected to perform, and do regularly perform, traditional guard functions. They perform security patrols of the perimeter checking for unauthorized entrance, control access by ensuring only authorized personnel are admitted into the building during turnstile duty, prevent theft by checking parcels and lunch boxes, enforce the client's no-smoking policy by checking for cigarettes and cigarette lighters, and check parking lots and issue parking tickets. Firefighters have the authority to ask unauthorized individuals to leave the premises and to remove them, and, if they refuse, the firefighters notify other personnel who then contact the police. It is not necessary

that the firefighters themselves have the authority to compel individuals to leave the premises. They will be considered as enforcing the employer's property and safety rules if they are charged with the responsibility of observing and reporting infractions. *The Wackenhut Corp.*, 196 NLRB at 279.

While it is clear that the primary function of the firefighters is to fight fires and maintain fire equipment, they are specifically charged with the responsibility of enforcing the client's rules and regulations for its property, which is a continual part of their responsibility and is a significant portion of the requirements of their job as reflected in the Employer's manual and as indicated in the daily reports. In these circumstances, the firefighters' guard duties are not minor or incidental. See *United Technologies Corp.*, 245 NLRB 932 (1979); *Reynolds Metals Co.*, 198 NLRB 120 (1972); *North American Aviation, Inc.*, 161 NLRB 297, 299 (1966). Thus, I find that the firefighters employed by the Employer are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, because the Petitioner admits to membership individuals other than guards, I shall dismiss the petition.

### **III. CONCLUSIONS AND FINDINGS**

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>4</sup>
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

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<sup>4</sup> The Petitioner, in its brief, moves to strike Employer's Exhibit 4 on the supervisory duties of the platoon leaders which exhibit was admitted by the hearing officer over the Petitioner's objections. The Petitioner essentially contends Exhibit 4 should not have been admitted because it contains only conclusionary language on the duties of the platoon leader. The Petitioner's argument is moot because I have concluded it is not necessary to address the supervisory issue. Further, the hearing officer correctly admitted Exhibit 4. The use of conclusionary language affects the weight given to a document, not its admissibility. The Petitioner's motion to strike Exhibit 4 is therefore denied.

3. The Petitioner's requested firefighter unit does not constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b)(3) of the Act.

4. It is not appropriate to direct an election in a firefighter unit because the firefighters are guards and the Petitioner admits employees other than guards as members.

#### **IV. ORDER**

The petition filed in this matter is dismissed.

#### **V. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., (EDT), on **June 13, 2008**. The request may **not** be filed by facsimile.

**E-Filing:** The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your

documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated: May 30, 2008  
at St. Louis, Missouri

/s/ Ralph R. Tremain  
Ralph R. Tremain, Regional Director  
National Labor Relations Board, Region 14